

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TONY CHANNELL,

Plaintiff,

v.

**NUTRITION DISTRIBUTION, LLC,
d/b/a ANABOLIC EXTREME,
DESIGNER SUPPLEMENTS, INC.,
et al.,**

Defendant.

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CASE NO. 2:07-cv-01103-TFM

**MOTION TO STRIKE DEFENDANT DPS NUTRITION, INC.'S VOLUNTARY
JOINDER IN NOTICE OF REMOVAL AS UNTIMELY FILED**

Tony Channell requests that the Court enter an order striking DPS Nutrition, Inc.'s, Voluntary Joinder in Notice of Removal (Doc. 17) for the following reasons, in addition to the arguments set forth in his Brief in Support of Motion to Remand:

1. A party consenting to removal must do so in writing within 30 days of service of the Summons and Complaint. *See Alexander by Alexander v. Goldome Credit Corp.*, 772 F.Supp. 1217, 1222 (M.D.Ala. 1991) (overruled on other grounds); *Miles v. Kilgore*, 928 F.Supp. 1071, 1077 (N.D.Ala. 1996); *East v. Long*, 785 F.Supp. 941, 945 (N.D.Ala. 1992).

2. DPS Nutrition, Inc., was served with the Summons and Complaint on November 19, 2007.

3. The time period for DPS Nutrition, Inc., to properly join Designer Supplement Inc.'s, Notice of Removal expired on December 19, 2007.

4. DPS Nutrition, Inc., filed its written consent on January 7, 2008 (29 days after it was due). This is a clear admission that Designer Supplements, Inc., did not have DPS Nutrition, Inc.'s, written consent for removal at the time the Notice of Removal was filed.

5. Tony Channell will be substantially prejudiced if DPS Nutrition, Inc., is allowed to join Designer Supplements, Inc.'s, Notice of Removal at this stage, especially in light of his now-pending Motion to Remand which is before the Court on this very issue.

Accordingly, for the reasons stated above and for the reasons more thoroughly discussed in his Brief in Support of Motion to Remand, Tony Channell respectfully requests that the Court strike DPS Nutrition, Inc.'s, Voluntary Joinder in Notice of Removal as untimely filed.

/s/ Matthew E. Munson
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CERTIFICATE OF SERVICE

I hereby certify that foregoing document was filed electronically on this 8th day of January, 2008 by uploading the same to the Court's CM/ECF system which will send a Notice of Electronic Filing upon all counsel of record.

/s/ Matthew E. Munson

OF COUNSEL